

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Nooksack Branch
Nooksack, Washington 98276
(City of Nooksack, Petitioner)

Docket No. A2011-17

**MOTION OF UNITED STATES POSTAL SERVICE
TO DISMISS PROCEEDINGS**
(May 31, 2011)

This matter commenced with a letter received by the Postal Regulatory Commission that purports to invoke its jurisdiction under 39 U.S.C. § 404(d) to consider an appeal of an alleged Postal Service decision to close the Nooksack Branch.¹ As described in the Postal Service's Supplemental Response,² the Nooksack Branch was suspended; no closure has yet occurred. As the Postal Service has consistently maintained in this and other dockets, the scope of section 404(d)(5) is limited to closing or consolidation of "Post Offices" and does not apply to the suspension of a postal facility, or to the closing of stations, branches, or other units subordinate to a Post Office. Because Petitioner's appeal concerns the suspension of a branch, an event that falls outside the scope of 39 U.S.C. § 404(d)(5), the Commission lacks subject matter jurisdiction and should dismiss the appeal.

¹ Petition for Review Received from James Ackerman Regarding the Closure of Nooksack Post Office, Nooksack Washington 98276, PRC Docket No. A2011-17 (May 17, 2011).

² Supplemental Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the Nooksack Branch, Nooksack, Washington 98276, PRC Docket No. A2011-17 (May 27, 2011).

PROCEDURAL HISTORY

By means of Order No. 734 (May 19, 2011), the Postal Regulatory Commission (Commission) docketed correspondence from the City of Nooksack, Washington, assigning PRC Docket No. A2011-17 as an appeal pursuant to 39 U.S.C. § 404(d). Petitioner filed an application to suspend the discontinuance of the Nooksack Branch (the “Application”)³ on May 17, 2011. On May 27, 2011, the Postal Service filed both its response to the Application,⁴ and a supplemental response clarifying that Petitioner’s appeal involved a suspension, and not a discontinuance, of the Nooksack Branch.

FACTUAL BACKGROUND

Nooksack is a non-charter code city located in Whatcom County in the state of Washington. The Nooksack Branch is a postal branch under the administrative responsibility of the Everson Post Office, located within one mile of the Nooksack Branch. See Exhibit 1 (printout from “Locate a Post Office” on USPS.Com).⁵ Postal officials suspended operation of the Nooksack Branch on May 27, 2011, due to expiration of the lease for the facility housing the Nooksack Branch. Former customers of the Nooksack Branch may obtain postal services at the Everson Post Office, located within a mile of the Nooksack Branch, and through <http://www.USPS.com/> and other expanded access options.

³ Application for Suspension of Closure of the Nooksack Post Office, Nooksack, Washington 98276, PRC Docket No. A2011-17 (May 17, 2011).

⁴ Response of United States Postal Service to Petitioner’s Application for Suspension of Discontinuance for the Nooksack Branch, Nooksack, Washington 98276, PRC Docket No. A2011-17 (May 27, 2011).

⁵ This printout uses the term “Post Office” for retail units staffed by postal employees, thus including stations, branches and Post Offices.

ARGUMENT

This matter raises the question of whether the Postal Regulatory Commission has jurisdiction to consider an appeal of a postal branch suspension. The primary issue raised by the Complaint is whether 39 U.S.C. § 404(d) grants the Commission jurisdiction to consider an appeal of a suspension of operations, rather than a discontinuance of a postal facility. Another issue raised by the Complaint is whether 39 U.S.C. § 404(d) grants the Commission jurisdiction to consider an appeal of a discontinuance or suspension concerning stations, branches, or other subordinate units of a Post Office.

Petitioner's appeal is not within the scope of the Commission's jurisdiction under 39 USC § 404(d). Section 404(d) does not apply to a suspension of operations at a postal retail facility. See 39 U.S.C. § 404(d); Order Dismissing Docket No. A89-10 Fineview, New York 13640, PRC Order No. 833, PRC Docket No. A89-10 (July 19, 1989)(ruling that "the Commission has no jurisdiction over the matter" where a retail facility is suspended and the Postal Service "has made no final decision to close or consolidate the [retail facility]"). Section 404(d) provides that an appeal under that section must concern a "closing," and not merely a suspension, of a "Post Office," and not a subordinate unit of a Post Office. See 39 U.S.C. § 404(d). Accordingly, as a matter of law, the relief requested by the Petitioner is not available to Petitioner and should be denied.

Even if this appeal involved the discontinuance of the Nooksack Branch, the Commission would not have jurisdiction to hear the appeal. The Nooksack Branch is not an independent Post Office, so Commission jurisdiction under 39

U.S.C. § 404(d) does not attach. As the Commission is well aware, the Postal Service understands that the Commission lacks subject matter jurisdiction under 39 U.S.C. § 404(d) to review Postal Service decisions regarding the discontinuance or suspension of stations and branches. See *generally* Reply Brief of the United States Postal Service, section III (pp. 6-12), PRC Docket No. N2009-1 (December 16, 2009); Comments of United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), PRC Docket No. A2010-3 (April 19, 2010).⁶ In the Postal Service's view, the Post Office discontinuance regulations in 39 C.F.R. Part 241.3 and Handbook PO-101 do not apply to the Nooksack Branch because the Nooksack Branch is not an independent Post Office, and it has not been the subject of a discontinuance. Similarly, the Commission's Rules of Practice for Post Office closings found in section 3001.110 et seq. do not apply to a subordinate unit of a Post Office, or to a suspension, which is not a final decision regarding the status of a postal facility. Petitioner fails to allege facts that constitute a condition precedent to any jurisdiction of the Commission under section 404. 39 U.S.C. § 404(d)(5).

Petitioner argues that the Postal Service should have followed the procedural requirements of 39 U.S.C. § 404(d) and 39 C.F.R. § 241.3 as part of its decision to suspend the Nooksack Branch. Petition for Review Received from James Ackerman Regarding the Closure of Nooksack Post Office, Nooksack Washington 98276, PRC Docket No. A2011-17 (May 17, 2011) at 4-6. But as described above, the Postal Service had no obligation to follow these procedures because its decision concerned a suspension, and not a discontinuance, and

⁶ In turn, the Postal Service is well aware that the Commission claims a broader jurisdiction.

because the Nooksack Branch is not a Post Office. Even if Postal Service decisions regarding the Nooksack Branch were governed by 39 U.S.C. § 404(d) and 39 C.F.R. § 241.3, the statutory and regulatory procedures would not apply to a decision to suspend the Nooksack Branch. Section 404(d) and 39 C.F.R. § 241.3 are triggered by the Postal Service's decision to close a Post Office, and the Postal Service has made no decision to close the Nooksack Branch.

This appeal concerns the suspension of a postal branch. Thus, 39 U.S.C. § 404(d) and 39 C.F.R. § 241.3 do not apply. Accordingly, the Commission should dismiss the appeal.

CONCLUSION

The United States Postal Service respectfully requests that the Postal Regulatory Commission dismiss this appeal.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
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May 31, 2011

EXHIBIT 1



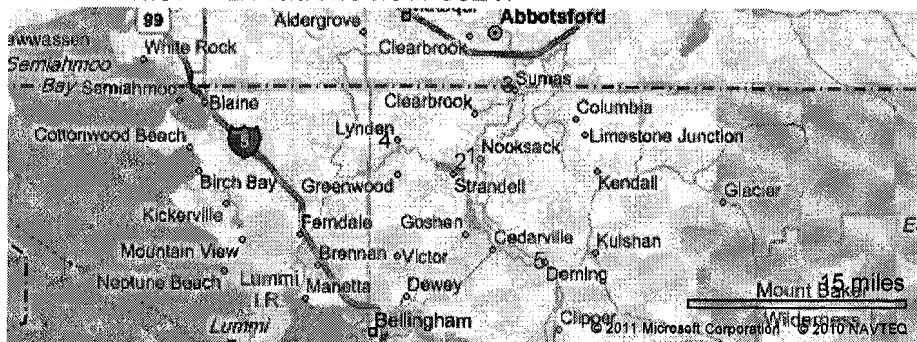
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